

Date Sent: Friday, April 03, 2009 8:57 AM
From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>
To: <athibeault@burlingtontelecom.com>,
Chris Burns <cburns@burlingtontelecom.com>,
"William F. Ellis" <wellis@mcneilvt.com>
Subject: RE: Responses to DPS Questions

have to get back to you late morning

>>> "William F. Ellis" <wellis@mcneilvt.com> 4/3/2009 8:40 AM >>>
Thanks, Jonathan. I will take those points up with Chris. Could you please take a look at the draft Comcast responses. I am concerned that they are on to the fact that the City has used its funds to prop up BT in violation of the CPG. Could you explain to me the debt financing of Phase II that is supposedly referenced in the last 2 annual reports?

===== Original Message from "Jonathan P.A. Leopold, Jr."
<JLeopold@ci.Burlington.vt.us> at 4/3/2009 7:35 am

>Hi

>

>Looks great to me.

>

>2 points

>

>1 in Chris' testimony he uses "than" when it should be "then"

>

>2 When he says "not served" would it be preferable to say something

>like "not readily served", I mean to wonder whether we could serve but

>it would not be readily availalbe or easily served

>

>>>> "William F. Ellis" <wellis@mcneilvt.com> 4/2/2009 11:29 AM >>>

>Here is a final draft of the responses to the Department's discovery requests.

> Please note there are a few blanks that still need to be filled in.

>Also,

>please pay special attention to the responses to Questions 13 and 14 to

>see if

>these can be beefed up any. Thanks. I hope to have the responses to

>Comcast's questions to you by later today.

>

>William F. Ellis, Esq.

>McNeil, Leddy & Sheahan

>271 South Union Street

>Burlington, VT 05401

>

>Telephone: (802) 863-4531

>Fax: (802) 863-1743

>E-mail: wellis@mcneilvt.com

>

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>number or email address. Thank you.

Date Sent: Friday, April 03, 2009 12:39 PM
From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>
To: Amber Thibeault <athibeault@burlingtontelecom.com>,
Christopher Burns <cburns@burlingtontelecom.com>,
"William F. Ellis" <wellis@mcneilvt.com>
Subject: RE: Responses to Comcast Questions

it looks good to me, nice work everyone

>>> "William F. Ellis" <wellis@mcneilvt.com> 4/3/2009 12:18 PM >>>
Here is the final draft of the Comcast responses. I have incorporated

Jonathan's edits to the DPS responses and these are now ready for signature.

===== Original Message from "Jonathan P.A. Leopold, Jr."
<JLeopold@ci.Burlington.vt.us> at 4/3/2009 11:56 am

>It looks good, I have given my suggestions to Bill over the phone &
await

>a final

>

>>>> "Thibeault, Amber" <athibeault@burlingtontelecom.com> 4/3/2009
>11:50 AM >>>

>Bill,

>

>In Question No. 1, the copies of the line extension reports are not
>complete. BT does not have the map for the 2006 line extension
report.

>Do we want to add a sentence in this question which states this or
>wait

>for Comcast to ask where the maps are and then tell them to go to the
>State?

>

>In Question No. 7 & No. 8 general objection is correct in addition
>this

>information is available in the budget, which is located online. The
>actual reasons for the variances are available in public documents
>such

>as the BOF minutes. If Comcast asked for exactly how much we spent on
>fiber this is proprietary. We should be cognizant of the fact that we

>are sending them to financial information which shows the overrun.
>Comcast obviously has access to this information but do we want to

>point

>them in that direction? Should we just object to the financial
>questions

>without any additional comment? The question as previously written
>pointed Comcast in the direction of the City's annual reports. The
>annual reports are not responsive to the question.

>

>In Question No. 19 (i) the resolution relating to Authorization to
>Enter

>into Lease Financing does not mention the 95% percent thus I would
not

>include it in this section. I would provide the standard response
that

>this is available from more convenient burdensome sources, the City's
>public records. However, this does not answer (ii), (iii) or (iv) of

>the
>question. I believe these communications would have been
>attorney-client
>or protective agreement conversations?
>

>I think that's all I have for Comcast. Will look at the DPS questions
>again and get back to you shortly.
>

>Amber Thibeault
>

>Contract and Governmental Affairs Specialist
>Burlington Telecom

>200 Church Street, Suite 101

>Burlington, VT 05401

>Office: (802) 846-5031

>Mobile: (802) 233-5386

>Fax: (802) 652-4220

>-----Original Message-----

>From: William F. Ellis [<mailto:wellis@mcneilvt.com>]

>Sent: Thursday, April 02, 2009 5:10 PM

>To: Burns, Christopher; Leopold, Jonathan; Thibeault, Amber

>Subject: Responses to Comcast Questions
>

>All,
>

>Attached is what I have for Comcast thus far. This still needs some
>work from

>my perspective. We need to have all this filed with the Board by
>close

>of

>business tomorrow.
>

>William F. Ellis, Esq.

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Date Sent: Friday, April 03, 2009 12:50 PM
From: "Thibeault, Amber" <athibeault@burlingtontelecom.com>
To: "William F. Ellis" <wellis@mcneilvt.com>,
"Burns, Christopher" <cburns@burlingtontelecom.com>,
"Leopold, Jonathan" <jleopold@ci.burlington.vt.us>
Subject: RE: Final Responses to DPS Questions

These look fine!

Amber Thibeault

Contract and Governmental Affairs Specialist
Burlington Telecom
200 Church Street, Suite 101
Burlington, VT 05401
Office: (802) 846-5031
Mobile: (802) 233-5386
Fax: (802) 652-4220

-----Original Message-----

From: William F. Ellis [mailto:wellis@mcneilvt.com] Sent: Friday, April 03, 2009 11:08 AM
To: Burns, Christopher; Thibeault, Amber; Leopold, Jonathan
Subject: Final Responses to DPS Questions

Here is the final draft. Let me know if you have any further comments.

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401

Telephone: (802) 863-4531
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Date Sent: Wednesday, April 08, 2009 3:43 PM
From: wellis@mcneilvt.com ("William F. Ellis")
To: "Thibeault, Amber" <athibeault@burlingtontelecom.com>
Cc: "Leopold, Jonathan" <jleopold@ci.burlington.vt.us>
Subject: RE: DPS 2nd set of questions

Amber,

You should make sure Jonathan reviews all the questions so he gets a flavor for where this thing is headed. Number 9 may not be relevant to this proceeding, but DPS is perfectly capable of opening a new investigation if we choose to object and fight. I'm concerned fighting is likely to cast even more light on the City's non-compliance on this issue, and could result in the Board's broadening of the scope of this proceeding.

===== Original Message from "Thibeault, Amber"
<athibeault@burlingtontelecom.com> at 4/8/2009 3:31 pm

> Billy Bob,

>

>

>

> I have attached what I have to date for BT's response to the DPS' 2nd
> set of discovery requests. Mike was out of the office this afternoon but
> I have told him to be prepared to sit down and list off what streets
> were not built and why for DPS question number eight. I need to talk to
> you about question number one. Question number nine is for Jonathan
> unless we can object on relevance grounds?

>

>

>

>

>

> Amber Thibeault

>

>

>

> Contract and Governmental Affairs Specialist

>

> Burlington Telecom

>

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>

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Date Sent: Thursday, April 09, 2009 7:45 PM

From: wellis@mcneilvt.com ("William F. Ellis")

To: "Leopold, Jonathan" <jleopold@ci.burlington.vt.us>

Subject: Telecom

Jonathan,

Do you have time to speak tomorrow re: strategy for BT. This is pretty important from my perspective.

Date Sent: Friday, April 10, 2009 8:17 AM

From: "Thibeault, Amber" <athibeault@burlingtontelecom.com>

To: "William F. Ellis" <wellis@mcneilvt.com>,
"Leopold, Jonathan" <jleopold@ci.burlington.vt.us>

Cc: "Burns, Christopher" <cburns@burlingtontelecom.com>

Subject: (none)

Attachment(s): CABLE ANNUAL REPORT FORM08.xls

All,

Attached please find a draft of BT's 2008 annual cable report that is due next Wednesday (April 15th). The document is a public record and will be filed with the DPS and the PSB. Please review in light of the current Docket No. 7044. Please send any suggested changes or comments to me by Monday morning.

Thank you,

Amber Thibeault

Contract and Governmental Affairs Specialist

Burlington Telecom

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MEMORANDUM

Confidential—Attorney Work Product and Privileged Communication

To: Hon. Bob Kiss, Mayor
Jonathan P.A. Leopold, CAO
Kenneth Schatz, City Attorney

From: William F. Ellis, Esq.
Joseph E. McNeil, Esq.

Date: April 14, 2009

Re: Burlington Telecom

This memo is being provided for your eyes only regarding our concerns over Burlington Telecom ("BT") and the proceedings pending before the Vermont Public Service Board ("PSB").

By way of background, Condition 17 of BT's Certificate of Public Good ("CPG") issued by the PSB required BT to build its system "to serve every residence, building and institution" by September 15, 2005. In early September 2008 BT filed a petition with the PSB to amend Condition 17 when it became apparent this goal would not be met. Comcast was allowed to intervene in the proceeding to protect its claimed interest in assuring competitive neutrality between itself and BT.

Subsequent to filing the petition to amend BT engaged in settlement discussions with the Department of Public Service ("DPS"). During these discussions it became apparent to this office that the City also was in violation of Condition 60 of the CPG. Condition 60 provides that BT may participate in the City's pooled cash management system provided BT reimburses amounts advanced on its behalf within two months. Apparently, the City has been loaning funds from its pooled cash to BT since January 2008, and those funds have not been repaid to date.

At a meeting with the DPS on November 25, 2008, BT revealed that the City had loaned BT \$10 million. While the DPS did not pick up on the potential for this loan to run afoul of Condition 60, they did question whether PSB approval was necessary under other statutory provisions. We did not and do not believe the loan is in violation of any statutory requirement, but continue to

believe that it contravenes Condition 60. We also believed that the DPS would eventually figure out that the City's loan to BT contravened Condition 60 and suggested the City meet the issue head on in the present PSB proceeding. It was decided, however, to let sleeping dogs lie and the issue was not raised with the DPS in continuing settlement discussions.

When settlement discussions broke down the parties were forced into litigation. BT's position in the proceeding is to amend Condition 17 of the CPG to allow completion of a detailed audit and engineering of the City to determine the extent of its non-compliance. Only after the completion of the audit and engineering will the City be in a position to provide a reliable estimate of the amount of time it will take to "build out" the City, whatever that requirement may eventually be interpreted to require. The DPS and Comcast served BT with extensive discovery requests that indicate both are aware of BT's non-compliance with Condition 60. While we were able to generally avoid the issue when responding to the first round of discovery, question 9 of the DPS' second set of discovery asks whether BT has been funded with the City's pooled cash and, if so, when it was so funded and when did it repay the City. Several of Comcast's questions likewise have focused on Condition 60.

We can continue to object to questions concerning BT's compliance with Condition 60 as irrelevant to issues concerning Condition 17, and, while unlikely, may be successful in defeating a motion to compel (which Comcast filed yesterday afternoon) on this ground. Even if BT were successful in defeating a motion to compel, this would not prevent the DPS from pursuing this information through its statutory oversight powers or initiating its own PSB investigation into BT's compliance with Condition 60. In fact, the DPS may not need to do anything to obtain this information other than review BT's annual report, which is due to be filed with the PSB and the DPS tomorrow, April 15, 2009. The point being that the City's non-compliance with Condition 60 will eventually become public and the City will need to deal with it, if not now then later.

It is our preliminary view that the City should address this issue head on sooner rather than later, and not wait to have it brought up by DPS or worse, Comcast. Our thought is for the City to file an amended petition to address BT's compliance with Conditions 17 and 60, as well as any other conditions that may need modification. Proceeding in this fashion will allow the City to tell its story regarding the present financing of BT and the constraints the City has faced as a result of having to deal with the restrictive language in the City Charter placed there at Comcast's predecessor's bequest. Condition 60 also allows the City to request Board approval of financings that are not in compliance with Condition 60, so it would be our suggestion that we seek Board approval to use the full panoply of financial tools otherwise available to the City to accomplish the build out of the City. While Comcast will argue that allowing the City to do so will result in an un-level playing field, the City would be better off facing that argument than continuing to dodge the DPS' questions and ignoring the proverbial elephant in the room.

With respect to Condition 17, it has become apparent that no one has a clear understanding as what it means to build a network "to serve" every residence, etc. For instance, with respect to private developments, is it sufficient to pass the private property from the public right of way, or

Hon. Bob Kiss, Mayor
Jonathan P.A. Leopold, CAO
Kenneth Schatz, City Attorney
April 14, 2009
Page 3

is the City required to obtain an easement over the private property? One thing the City may want to consider is amending applicable ordinances to allow BT to serve properties aerially as opposed to underground. One problem BT faces is the excessive cost of installing facilities underground, coupled with no assurance that once that capital expenditure is made there will be any customers from which to recoup that investment. If the City were to allow BT to serve these private properties with aerial lines, the cost of construction could be lessened substantially. Then, if the private property owner refuses to allow overhead lines and will not contribute towards the cost of undergrounding, that private property should be considered "served" for purposes of satisfying Condition 17. The City also could consider waiving excavation fees to lessen the cost of installation in situations where undergrounding is necessary. Comcast would not be able to complain about such a waiver since it is our understanding that Comcast currently does not pay any excavation fees, just like it does not pay franchise fees.

In order to allow the City time to give these issues and others the thoughtful consideration they deserve before proceeding further, yesterday we moved the PSB to enlarge the schedule by thirty (30) days. We were intending to seek a longer extension, but the DPS would only support 30 days. Given the short time frame, we should meet as soon as possible to begin developing a City strategy for addressing these issues.

We look forward to meeting with you at your earliest convenience.

Date Sent: Friday, April 17, 2009 3:00 PM
From: "Burns, Christopher" <cburns@burlingtontelecom.com>
To: "William F. Ellis" <wellis@mcneilvt.com>,
"Thibeault, Amber" <athibeault@burlingtontelecom.com>,
"Leopold, Jonathan" <jleopold@ci.burlington.vt.us>,
"Schatz, Ken" <kschatz@ci.burlington.vt.us>
Subject: RE: PSB Docket No. 7044 - Burlington Telecom

Bill,

Like I said at the meeting today I think this may be the rule Amber brought up in a prior meeting. Chris

Christopher Burns, GM
Burlington Telecom
200 Church St., Suite 101
Burlington, VT 05401

www.burlingtontelecom.com
802-540-0007

FTTH Council logo

-----Original Message-----

From: William F. Ellis [<mailto:wellis@mcneilvt.com>] Sent: Friday, April 17, 2009 2:53 PM
To: Thibeault, Amber; Burns, Christopher; Leopold, Jonathan; Schatz, Ken
Subject: FWD: RE: PSB Docket No. 7044 - Burlington Telecom

FYI.

===== Original Message from "Beliveau, Laura"

<Laura.Beliveau@state.vt.us> at 4/17/2009 2:05 pm

>Hi Bill-- This reply came from Corey. I hope it is helpful to you.

>

>Laura

>

>The drops are described in PSB rule 8.367 Subscriber drops

>

>(A) Each company provides a standard, fixed-price installation from its

distribution cable to the subscriber's premises. Installations up to three hundred (300) feet in length (aerial construction) shall be made without

additional charge to the subscriber. Drops in excess of this length, any

concealed wiring or other custom installation work, and all underground drops, shall be charged at the rates set forth in the company's rules and regulations, which shall provide for a credit equal to the cost of the standard installation.

>

>-----Original Message-----

>From: William F. Ellis [<mailto:wellis@mcneilvt.com>]

>Sent: Friday, April 17, 2009 1:23 PM

>To: Beliveau, Laura

>Subject: RE: PSB Docket No. 7044 - Burlington Telecom

>

>Laura,

>
>I left you a voice message earlier. I met with City reps. today and we would
>like to meet with the Department to discuss this docket at your earliest
>convenience. Also, does the Department know what Comcast's "standard,
>no-charge service drop" is. Comcast's or any other telecom's "standard" would
>be helpful to know. Please note that Rob Munnell is not copied on this.
>
>===== Original Message from "Beliveau, Laura"
><Laura.Beliveau@state.vt.us> at
>4/17/2009 1:16 pm
>>I am out of the office next week until Thursday. If your discovery
>conference occurs before Thursday, please let me know the results. If it
>happens after Thursday, please do include me in the scheduling. I have a
>prehearing conference Thursday morning, but should be available after 11.
>>
>>Thanks-
>>
>>Laura
>>
>>
>>From: Robert J. Munnelly, Jr. [<mailto:rmunnelly@murthalaw.com>]
>>Sent: Friday, April 17, 2009 12:49 PM
>>To: wellis@mcneilvt.com; Whitney, Judith; Beliveau, Laura; PSB - Clerk
>>Cc: Alicia_Matthews@cable.comcast.com;
>>Lisa_Birmingham@cable.comcast.com
>>Subject: Re: PSB Docket No. 7044 - Burlington Telecom
>>
>>
>>Thanks, bill. Once you get your thoughts sorted out re responses and
>objections, reach out and we set up a time to talk about scheduling. I am on
>road next week but can find time with some notice. Rob
>>
>>
>>
>>Per IRS Regulations, any federal tax advice in this e-mail is not intended to
>be used and cannot be used for the purpose of avoiding federal tax penalties
>unless otherwise stated.
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>confidential, and may be protected from disclosure. Any improper use of this
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>>

>>----- Original Message -----

>>From: William F. Ellis <wellis@mcneilvt.com>

>>To: Robert J. Munnely, Jr.; Judith.Whitney@state.vt.us

>><Judith.Whitney@state.vt.us>; Laura.Beliveau@state.vt.us

>><Laura.Beliveau@state.vt.us>; psb.clerk@state.vt.us

>><psb.clerk@state.vt.us>

>>Cc: Alicia.Matthews@cable.comcast.com

>><Alicia.Matthews@cable.comcast.com>;

>>Lisa.Birmingham@cable.comcast.com <Lisa.Birmingham@cable.comcast.com>

>>Sent: Fri Apr 17 12:43:25 2009

>>Subject: RE: PSB Docket No. 7044 - Burlington Telecom

>>

>>Rob,

>>

>>I agree that Comcast's testimony is not due today and that we would have to

>>agree on a revised schedule after the discovery dispute is resolved one way

>or

>>the other.

>>

>>===== Original Message from "Robert J. Munnely, Jr."

>><rmunnely@murthalaw.com> at 4/17/2009 8:17 am

>>>In the interest of time and to advise all parties of its understanding of

>the

>>attached order, Comcast advises all parties as follows.

>>>

>>>Comcast notes that the attached order does not expressly address the impact

>>of the enlargement on the existing prefiled schedule but understands the

>order

>>to mean that Comcast's prefiled testimony will not be due until after BT

>>provides discovery responses to the pending requests (clarified by agreement

>>of the parties if possible) and/or responds to the pending motion to compel

>on

>>or before May 1. Comcast also believes that part of the discussions between

>>the parties envisioned by the order to resolve discovery disputes without the

>>need for Board ruling if possible is that the parties should seek to reach

>>agreement on an amended procedural schedule that would govern the remainder

>>of the schedule up to the date for hearings (as a new hearing date would need

>>to be set by the Board).

>>>

>>>If any party disagrees with this understanding of the order, they should

>>email or call as soon as possible and Comcast will formally move for
>>clarification and for a short extension that would be needed to
complete and
>>file testimony (due by the original schedule today) based upon the
current
>>partial discovery responses and the clarifications concerning the
scope of
>the
>>proceeding incorporated within the body of the order.
>>>
>>>Rob Munnelly
>>>
>>>
>>>
>>>Per IRS Regulations, any federal tax advice in this e-mail is not
intended
>to
>>be used and cannot be used for the purpose of avoiding federal tax
penalties
>>unless otherwise stated.
>>>The information contained in this e-mail and attachments is
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>>>
>>>----- Original Message -----
>>>From: Whitney, Judith <Judith.Whitney@state.vt.us>
>>>To: Beliveau, Laura <Laura.Beliveau@state.vt.us>; Ellis, William F.,
Esq.
>>><wellis@mcneilvt.com>; Robert J. Munnelly, Jr.
>>>Sent: Thu Apr 16 16:16:25 2009
>>>Subject: PSB Docket No. 7044 - Burlington Telecom
>>>
>>>Enclosed is an Order being issued today by Hearing Officer John
Bentley
>>relative to this docket. Hard copies of the Order are also being sent
via
>>U.S. Mail to the full service list for the case.
>>>
>>>Thank you.
>>>
>>>Sincerely,
>>>
>>>Judith C. Whitney
>>>Deputy Clerk of the Board
>>>Vermont Public Service Board
>>>112 State Street
>>>Montpelier, VT 05620-2701
>>>802-828-2358
>>
>>William F. Ellis, Esq.

>>McNeil, Leddy & Sheahan
>>271 South Union Street
>>Burlington, VT 05401
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>>Telephone: (802) 863-4531
>>Fax: (802) 863-1743
>>E-mail: wellis@mcneilvt.com
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>>number or email address. Thank you.
>

>William F. Ellis, Esq.
>McNeil, Leddy & Sheahan
>271 South Union Street
>Burlington, VT 05401
>
>Telephone: (802) 863-4531
>Fax: (802) 863-1743
>E-mail: wellis@mcneilvt.com
>

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>to this communication or otherwise. If you have received this
>communication in error, please contact me at the above phone
>number or email address. Thank you.

Date Sent: Monday, April 20, 2009 1:23 PM
From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>
To: <athibeault@burlingtontelecom.com>,
Chris Burns <cburns@burlingtontelecom.com>,
Ken Schatz <KSchatz@ci.Burlington.vt.us>,
"William F. Ellis" <wellis@mcneilvt.com>
Subject: FWD: RE: PSB Docket No. 7044 - Burlington Telecom

very interesting, what about a requirement for a contract prior to providing an install?

>>> "William F. Ellis" <wellis@mcneilvt.com> 4/17/2009 2:53:24 PM >>>
FYI.

===== Original Message from "Beliveau, Laura"

<Laura.Beliveau@state.vt.us> at 4/17/2009 2:05 pm

>Hi Bill-- This reply came from Corey. I hope it is helpful to you.

>

>Laura

>

>The drops are described in PSB rule 8.367 Subscriber drops

>

>(A) Each company provides a standard, fixed-price installation from its distribution cable to the subscriber's premises. Installations up to three hundred (300) feet in length (aerial construction) shall be made without additional charge to the subscriber. Drops in excess of this length, any concealed wiring or other custom installation work, and all underground drops, shall be charged at the rates set forth in the company's rules and regulations, which shall provide for a credit equal to the cost of the

standard instal

>lation.

>

>-----Original Message-----

>From: William F. Ellis [mailto:wellis@mcneilvt.com]

>Sent: Friday, April 17, 2009 1:23 PM

>To: Beliveau, Laura

>Subject: RE: PSB Docket No. 7044 - Burlington Telecom

>

>Laura,

>

>I left you a voice message earlier. I met with City reps. today and we would

>like to meet with the Department to discuss this docket at your earliest

>convenience. Also, does the Department know what Comcast's "standard,

>no-charge service drop" is. Comcast's or any other telecom's "standard" would

>be helpful to know. Please note that Rob Munnelley is not copied on this.

>

>===== Original Message from "Beliveau, Laura"

<Laura.Beliveau@state.vt.us> at

>4/17/2009 1:16 pm

>>I am out of the office next week until Thursday. If your discovery

>conference occurs before Thursday, please let me know the results. If it

>happens after Thursday, please do include me in the scheduling. I have a

>prehearing conference Thursday morning, but should be available after 11.

>>

>>Thanks-

>>

>>Laura

>>

>>

>>From: Robert J. Munnelly, Jr. [<mailto:rmunnelly@murthalaw.com>]

>>Sent: Friday, April 17, 2009 12:49 PM

>>To: wellis@mcneilvt.com; Whitney, Judith; Beliveau, Laura; PSB - Clerk

>>Cc: Alicia_Matthews@cable.comcast.com;

Lisa_Birmingham@cable.comcast.com

>>Subject: Re: PSB Docket No. 7044 - Burlington Telecom

>>

>>

>>Thanks, bill. Once you get your thoughts sorted out re responses and

>objections, reach out and we set up a time to talk about scheduling. I am on road next week but can find time with some notice. Rob

>>

>>

>>

>>Per IRS Regulations, any federal tax advice in this e-mail is not intended to

>be used and cannot be used for the purpose of avoiding federal tax penalties

>unless otherwise stated.

>>The information contained in this e-mail and attachments is privileged,

>confidential, and may be protected from disclosure. Any improper use of this

>communication may be subject to legal restriction or sanction. If you

received

>this in error, please reply to the sender and then delete.

>>

>>----- Original Message -----

>>From: William F. Ellis <wellis@mcneilvt.com>

>>To: Robert J. Munnelly, Jr.; Judith.Whitney@state.vt.us

>><Judith.Whitney@state.vt.us>; Laura.Beliveau@state.vt.us

>><Laura.Beliveau@state.vt.us>; psb.clerk@state.vt.us

>><psb.clerk@state.vt.us>

>>Cc: Alicia_Matthews@cable.comcast.com

>><Alicia_Matthews@cable.comcast.com>;

>><Lisa_Birmingham@cable.comcast.com> <Lisa_Birmingham@cable.comcast.com>

>>Sent: Fri Apr 17 12:43:25 2009

>>Subject: RE: PSB Docket No. 7044 - Burlington Telecom

>>

>>Rob,
>>
>>I agree that Comcast's testimony is not due today and that we would have to
>>agree on a revised schedule after the discovery dispute is resolved one way
>or
>>the other.
>>
>>===== Original Message from "Robert J. Munnelly, Jr."
>><rmunnelly@murthalaw.com> at 4/17/2009 8:17 am
>>>In the interest of time and to advise all parties of its understanding of
>the
>>attached order, Comcast advises all parties as follows.
>>>
>>>Comcast notes that the attached order does not expressly address the impact
>>of the enlargement on the existing prefiled schedule but understands the
>order
>>to mean that Comcast's prefiled testimony will not be due until after BT
>>provides discovery responses to the pending requests (clarified by agreement
>>of the parties if possible) and/or responds to the pending motion to compel
>on
>>or before May 1. Comcast also believes that part of the discussions between
>>the parties envisioned by the order to resolve discovery disputes without the
>>need for Board ruling if possible is that the parties should seek to reach
>>agreement on an amended procedural schedule that would govern the remainder
>>of the schedule up to the date for hearings (as a new hearing date would need
>>to be set by the Board).
>>>
>>>If any party disagrees with this understanding of the order, they should
>>email or call as soon as possible and Comcast will formally move for
>>clarification and for a short extension that would be needed to complete and
>>file testimony (due by the original schedule today) based upon the current
>>partial discovery responses and the clarifications concerning the scope of
>the
>>proceeding incorporated within the body of the order.
>>>
>>>Rob Munnelly
>>>

>>>
>>>
>>>Per IRS Regulations, any federal tax advice in this e-mail is not intended
>to
>>be used and cannot be used for the purpose of avoiding federal tax penalties
>>unless otherwise stated.
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>>communication may be subject to legal restriction or sanction. If you
>received
>>this in error, please reply to the sender and then delete.
>>>
>>>----- Original Message -----
>>>From: Whitney, Judith <Judith.Whitney@state.vt.us>
>>>To: Beliveau, Laura <Laura.Beliveau@state.vt.us>; Ellis, William F., Esq.
>>><wellis@mcneilvt.com>; Robert J. Munnelly, Jr.
>>>Sent: Thu Apr 16 16:16:25 2009
>>>Subject: PSB Docket No. 7044 - Burlington Telecom
>>>
>>>Enclosed is an Order being issued today by Hearing Officer John Bentley
>>relative to this docket. Hard copies of the Order are also being sent via
>>U.S. Mail to the full service list for the case.
>>>
>>>Thank you.
>>>
>>>Sincerely,
>>>
>>>Judith C. Whitney
>>>Deputy Clerk of the Board
>>>Vermont Public Service Board
>>>112 State Street
>>>Montpelier, VT 05620-2701
>>>802-828-2358
>>
>>William F. Ellis, Esq.
>>McNeil, Leddy & Sheahan
>>271 South Union Street
>>Burlington, VT 05401
>>
>>Telephone: (802) 863-4531
>>Fax: (802) 863-1743
>>E-mail: wellis@mcneilvt.com
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>

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>number or email address. Thank you.

Date Sent: Monday, April 20, 2009 2:31 PM
From: "Bob Kiss" <BKiss@ci.Burlington.vt.us>
To: "William F. Ellis" <wellis@mcneilvt.com>
Subject: RE: Draft Response to Comcast Motion to Compel

Bill,

I'd drop the last sentence on the second paragraph on page 4 ("How else can Comcast explain copying the media on its most recent filings other than attempting to oppress and embarrass BT?").

And, I'd drop the second sentence in the second paragraph on page 5 ("BT respectfully cautions the Board, however, not to allow Comcast to use it as a tool to further its anti-competitive designs.").

My suggestions.

Best regards,

Bob Kiss, Mayor
Room 34, City Hall
Burlington, VT 05401
(802) 865-7272

>>> "William F. Ellis" <wellis@mcneilvt.com> 04/17/09 1:25 PM >>>
FYI. This is a work in progress. Your thoughts would be appreciated.

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401

Telephone: (802) 863-4531
Fax: (802) 863-1743
E-mail: wellis@mcneilvt.com

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Date Sent: Thursday, April 23, 2009 10:54 AM

From: "Thibeault, Amber" <athibeault@burlingtontelecom.com>

To: "William F. Ellis" <wellis@mcneilvt.com>

Subject: DPS Questions Round #2

Attachment(s): BT Response to 2nd DPS Requests.doc

Bill,

I have attached the draft of BT's response to the second round of discovery from the DPS. I had most of these questions written up prior to our meeting yesterday but I amended question no. 8 because BT intends to build out Sunset Cliff Road, North Cove Road and Shelburne Street under the new Contribution in Aid of Construction ("CIAC") formula. These streets will fall outside the need for CIAC because they are aerial and cost less to build but I didn't want to draw more attention to the aerial v. buried distinction that Comcast continues to hammer.

Question No. 9 is a question for Jonathan to answer in light of the amended petition.

Do you want to meet on Monday morning or afternoon? I am completely free so whichever works best for you. Also don't forget Tuesday night meeting at the stinkin Lincoln.

Thanks,

Amber Thibeault

Contract and Governmental Affairs Specialist

Burlington Telecom

200 Church Street, Suite 101

Burlington, VT 05401

Office: (802) 846-5031

Mobile: (802) 233-5386

Fax: (802) 652-4220

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Date Sent: Friday, April 24, 2009 2:55 PM

From: "Thibeault, Amber" <athibeault@burlingtontelecom.com>

To: "William F. Ellis" <wellis@mcneilvt.com>

Subject: BT Response to 2nd Comcast Requests

Attachment(s): BT Response to 2nd Comcast Requests.doc

Bill,

I have maintained in some of the responses that the information provided to the DPS under the Protective Agreement are still confidential even though relevant under the amended petition to the PSB concerning Condition 60. As an example, in Question No. 18, which asks for all documents and a complete description of communications between the DPS and BT, most of the communications were "financial" in nature.

For Question No. 38 I am not sure how you want to address this. I am thinking that we address this by stating please see BT's Opposition to Motion to Compel. We will have to respond with some commentary regarding the original questions and some of the documents we will still not turn over based on trade secrets or attorney-client privilege.

Question No. 39 is one for you.

The only question I am waiting to answer is No. 25 Mike needs to give me his response to this. I have most of it completed.

Thanks,

Amber Thibeault

Contract and Governmental Affairs Specialist

Burlington Telecom

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Burlington, VT 05401

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Date Sent: Tuesday, April 28, 2009 10:52 AM
From: "Thibeault, Amber" <athibeault@burlingtontelecom.com>
To: "William F. Ellis" <wellis@mcneilvt.com>
Subject: Motion to Compel

Attachment(s): Embedded_Content

Bill,

Here are my thoughts on the documents requested in the Motion to Compel.

Comcast 4 - Engineering studies, analyses, plans or documents related to costs are confidential. The schedule will be (was) provided in BT Response Comcast 2-25.

Comcast 6, 7 and 8 - Budget information is located online. Any variances are trade secrets and confidential.

Comcast 9 - Still do not see the relevance of this question. But if you want BT to produce this information from DPW we can attempt to locate it.

Comcast 17 and 18 - Jonathan will have to answer these questions but with condition 60 these are relevant.

Comcast 22 - We provided the resolution that was presented to the CC, any other information regarding funding and re-financing will have to come from Jonathan.

Comcast 23, 24, 26, 27, 28, 29, 30 - Questions for Jonathan

Comcast 31 - Burlington Telecom provided the PILOT payment information for 2005-2006, 2006-2007 and an estimation of the 2007-2008 PILOT with the April 7, 2008 public records request from Comcast (Lisa Birmingham). I am not sure if the valuation for 2008-2009 is complete yet. I believe these are done in April/May so I will have to check with John Van Vught and/or John Vickery.

Comcast 32 - This question is irrelevant to either of the conditions but

BT will provide Comcast with the location and dates of construction.

Comcast 33 - See Comcast Question No. 31.

Comcast 34 - See Comcast Question No. 32.

Comcast 35 - Tim Nulty never executed an Agreement with the Schools. The MOU was executed after Tim resigned from BT.

Comcast 36 - Produce the MOU

Comcast 37 - A valuation of only the head-end was required by Condition 63. This valuation was provided on several occasions to Comcast including with the April 7, 2008 public records request.

Department 12 - Trade Secret

I will be around all day so give me a call if you have any questions.

Thanks,

Amber Thibeault

Contract and Governmental Affairs Specialist

Burlington Telecom

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Burlington, VT 05401

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Date Sent: Wednesday, April 29, 2009 2:17 PM

From: wellis@mcneilvt.com ("William F. Ellis")

To: "Leopold, Jonathan" <jleopold@ci.burlington.vt.us>

Subject: Burlington Telecom

Jonathan,

I thought you should be aware of Comcast's latest tactics in the present proceeding before the Public Service Board. During yesterday's telephone conference with lawyers for the Department of Public Service and Comcast to discuss possible settlement of discovery issues between BT and Comcast, Comcast had a woman named Alicia Matthews participate. At the end of the discussion Ms. Matthews stated a recurring theme coming from the Comcast camp that any delay in BT's build out of the City puts Comcast at a competitive disadvantage. Not only did I question how Comcast could possibly be hurt when it has no competition in areas of the City where BT has not built out, I also questioned who she was. After much evasiveness, she revealed she works in Comcast's public relations department. Her involvement in a lawyer conference call, coupled with Comcast copying WPTZ news in on its latest filings with the Board, indicates that Comcast intends to try and beat BT in the court of public opinion as well as before the PSB. The City should be prepared with a public response of its own when the opportunity arises, which could be soon if Comcast is successful in stirring up the media.

On another note and as a reminder, you were to send me the citations to the ValleyNet MOU that you suggested I review.

Please call with any questions.

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401

Telephone: (802) 863-4531
Fax: (802) 863-1743
E-mail: wellis@mcneilvt.com

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Date Sent: Wednesday, April 29, 2009 3:10 PM
From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>
To: "William F. Ellis" <wellis@mcneilvt.com>
Subject: RE: Burlington Telecom

thank you

see page 20 article 20 re: using municipal infrastructure

see page 4 article 3 re: line extension policy

>>> "William F. Ellis" <wellis@mcneilvt.com> 4/29/2009 2:17 PM >>>
Jonathan,

I thought you should be aware of Comcast's latest tactics in the present proceeding before the Public Service Board. During yesterday's telephone conference with lawyers for the Department of Public Service and Comcast to discuss possible settlement of discovery issues between BT and Comcast,

Comcast had a woman named Alicia Matthews participate. At the end of the discussion Ms. Matthews stated a recurring theme coming from the Comcast camp that any delay in BT's build out of the City puts Comcast at a competitive disadvantage. Not only did I question how Comcast could possibly be hurt when it has no competition in areas of the City where BT has not built out, I also questioned who she was. After much evasiveness, she revealed she works in Comcast's public relations department. Her involvement in a lawyer conference call, coupled with Comcast copying WPTZ news in on its latest filings with the Board, indicates that Comcast intends to try and beat BT in the court of public opinion as well as before the PSB. The City should be prepared with a public response of its own when the opportunity arises, which could be soon if Comcast is successful in stirring up the media.

On another note and as a reminder, you were to send me the citations to the ValleyNet MOU that you suggested I review.

Please call with any questions.

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Date Sent: Thursday, April 30, 2009 12:55 PM
From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>
To: <athibeault@burlingtontelecom.com>,
Ken Schatz <KSchatz@ci.Burlington.vt.us>,
"William F. Ellis" <wellis@mcneilvt.com>
Subject: RE: Motion to Reconsider

looks fine to me

>>> "William F. Ellis" <wellis@mcneilvt.com> 4/30/2009 12:34 PM >>>
Please take a look at the attached and let me know your thoughts. This
needs to be filed in Montpelier by 4:30 pm today.

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401

Telephone: (802) 863-4531
Fax: (802) 863-1743
E-mail: wellis@mcneilvt.com

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Date Sent: Thursday, April 30, 2009 1:01 PM
From: "Thibeault, Amber" <athibeault@burlingtontelecom.com>
To: "William F. Ellis" <wellis@mcneilvt.com>,
"Leopold, Jonathan" <jleopold@ci.burlington.vt.us>,
"Schatz, Ken" <kschatz@ci.burlington.vt.us>
Subject: RE: Motion to Reconsider

Attachment(s): Memo in support of Motion to Reconsider 4-30-09 rev ALT.doc

Bill,

This looks good to me with the exception of some minor changes.

Thanks,

Amber Thibeault

Contract and Governmental Affairs Specialist
Burlington Telecom
200 Church Street, Suite 101
Burlington, VT 05401
Office: (802) 846-5031
Mobile: (802) 233-5386
Fax: (802) 652-4220

-----Original Message-----

From: William F. Ellis [mailto:wellis@mcneilvt.com] Sent: Thursday, April 30, 2009 12:34 PM
To: Thibeault, Amber; Leopold, Jonathan; Schatz, Ken
Subject: Motion to Reconsider

Please take a look at the attached and let me know your thoughts. This needs to be filed in Montpelier by 4:30 pm today.

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401

Telephone: (802) 863-4531
Fax: (802) 863-1743
E-mail: wellis@mcneilvt.com

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Date Sent: Thursday, April 30, 2009 1:03 PM

From: "Ken Schatz" <KSchatz@ci.Burlington.vt.us>

To: <athibeault@burlingtontelecom.com>,
"Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>,
"William F. Ellis" <wellis@mcneilvt.com>

Subject: RE: Motion to Reconsider

Attachment(s): HTML

I like the tone and think it looks good. Thanks.

Ken

Kenneth A. Schatz
City Attorney City Hall, 149 Church St.
Burlington, VT 05401

(802) 865-7121 (phone)
(802) 865-7123 (fax)
kschatz@ci.burlington.vt.us

>>> "William F. Ellis" <wellis@mcneilvt.com> 4/30/2009 12:34 PM >>>

Please take a look at the attached and let me know your thoughts. This needs to be filed in Montpelier by 4:30 pm today.

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401

Telephone: (802) 863-4531
Fax: (802) 863-1743
E-mail: wellis@mcneilvt.com

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